

Prime Minister. ①

Would you like to ask the Trade and Industry Secretary and the Chancellor to consider widening the terms of reference of the review, and how reserved vigour can be given to EKP's work in that context? MEA 27/2

PRIME MINISTER

27 February 1986

I hope we can reconsider the

REVIEW OF COMPETITION LAW AND POLICY

present MMC. It is ambitious, lengthy and demanding. The U-S system in follow

(letter attached)

Paul Channon proposes to initiate a major review of competition law and policy, resulting in a Green Paper in the autumn of 1987 and legislation in the next Parliament.

merger to proceed

The Importance of Competition

or then if they appear to break known / unknown to other designers.

Extending competition is a fundamental aspect of Government policy: it results in more jobs, wealth-creation, better service and greater choice. Internationally it ensures export success and a strong pound. The Secretary of State's initiative therefore is to be welcomed as an important facet of Government economic policy.

Thus many makes emphasis are considered not

The Need for the Review

It is also needed from a DTI perspective because of:

- a. Dissatisfaction with the present implementation of Monopolies and Mergers policy. GEC - Plessey, Guinness - Argyll and Distillers, Hanson - Imps and United Biscuits have brought out once again the adverse effect of long delays before final decisions are reached, the inadequate criteria on which decisions are made, and the rôle of merchant banks in openly flouting Stock Exchange rules in making bids (eg Morgan Grenfell in two of the above bids).

- b. Piecemeal development in law relating to competition policy, which is being added to at present by the special régimes for telecommunications, financial services, water etc.
- c. The need to harmonise with EC law.
- d. The possibility of private actions being allowed.
- e. The inadequate powers to uncover informal agreements given by present laws.

#### The Scope of the Review

The scope of the review would be concerned with the operation of existing legislation and would therefore be centred on those laws for which the DTI is responsible.

- Fair Trading Act 1973
- Competition Act 1980
- Restrictive Trade Practices Act 1976
- Resale Prices Act 1964

If the DTI just focus on these Acts, then we will only get increased competition among some building contractors, cement manufacturers, booksellers and suppliers of artificial limbs and wheelchairs, etc.

But that still leaves major tracts of the economy where competition is restricted because of Government procurement policy and import controls, eg coal, steel, defence procurement, airlines, gas, Health Service etc. Any initiative calling itself 'a major review' should at the very least examine these areas. This would require the active support of EC(P).

#### Recommendations

1. Applaud the initiative.
2. Urge that the review be as broad in its coverage as possible.
3. To this end, suggest that EC(P) be invited to support the work of the Review.

B.G.

BRIAN GRIFFITHS



Secretary of State for Trade and Industry

CONFIDENTIAL

DEPARTMENT OF TRADE AND INDUSTRY

1-19 VICTORIA STREET

LONDON SW1H 0ET

Telephone (Direct dialling) 01-215

5422

GTN 215

(Switchboard) 01-215 7877

*CBG*  
*BG Appin*

20 February 1986

CONFIDENTIAL

The Rt Hon Nigel Lawson MP  
Chancellor of the Exchequer  
HM Treasury  
Parliament Street  
LONDON  
SW1

REVIEW OF COMPETITION LAW AND POLICY

I am writing to let you know that I propose to initiate a major review of competition law and policy, with a view to publication of a Green Paper in the Autumn of 1987, followed by a White Paper and legislation in the next Parliament. The intention to carry out such a review has already been mentioned in general terms in the House; I now propose to make a full announcement.

While there have been several reviews of some parts of the competition legislation over the past few years, there has never been a scrutiny of the legislation taken as a whole. The law has developed piecemeal, and continues to do so, for example in the special regimes for telecommunications, financial services and other sectors. There has been some criticism of particular aspects of UK competition law and its administration, as well as of its overall effectiveness. In addition, the direct application of EC competition law within the UK has been a major development: EC law is enforced by the European Commission but also provides a basis for private actions in the UK courts. Finally, there has been a growing interest in the possibility of a domestic competition regime allowing greater scope for private legal action by the victims of anti-competitive behaviour; a quick review of this question last year reached the conclusion that this thinking could not easily be grafted on to the current system of UK law, but left open the possibility that there might be scope for movement in this direction in a radical overhaul of the legislation.

DW3AJD

CONFIDENTIAL

17  
19 **86**  
BOARD OF TRADE  
BICENTENARY



CONFIDENTIAL

It would be an exaggeration to claim that there is a groundswell of opinion pressing for change. But given the background I have described, I believe that it would now be timely to undertake a thorough and comprehensive review of UK law and a careful study of all the options for change, including radical change if necessary. We shall need to start from first principles in defining the objectives of competition policy, against which the effectiveness of the current law and policy can be assessed.

The main focus of the work will be the principal powers in the legislation for the investigation and control of monopolies, mergers, anti-competitive practices and restrictive trade practices. It would clearly be untimely to review the new specialist regimes for the control of competitive behaviour in telecommunications, financial services and some other sectors. However, we will need to keep in mind the special regimes and watch for any implication that our main work may have for them; in particular, in considering the institutional structure of UK competition policy, we shall inevitably need to address the question of how the role of the specialist agencies relates to that of the OFT, and to consider the implications of the new regulatory regimes for the MMC.

There are two further points I should mention about the scope of the review. First, the Fair Trading Act contains special provisions for the control of newspaper mergers, which raise issues going far beyond mainstream competition policy considerations, though related to them. I propose that the review should cover newspaper mergers, since there are difficulties with the current legislation and I should not want to miss the opportunity to reform these provisions in any subsequent Competition Bill. Second, Section 11 of the Competition Act provides for MMC scrutiny of nationalised industries' efficiency. This has very little to do with competition policy, and a review would raise a number of difficult and entirely extraneous issues. I therefore propose that this provision should not be included in the review; though, as for the special regulatory regimes, we shall need to bear Section 11 in mind in our main work, particularly since it provides a major part of the MMC's workload.

DW3AJD

CONFIDENTIAL

17  
19  
**86**  
BOARD OF TRADE  
BICENTENARY



CONFIDENTIAL

I intend that the review should be conducted by a Working Group under the broad guidance of a higher-level Steering Committee. In order to keep the review brisk and sharply focused, I should like to keep both these groups as small as possible. The Working Group will be of DTI officials, augmented by the OFT and the MMC as appropriate. The Steering Committee will be chaired by my Department and include representation from MAFF - thereby covering the bulk of industrial sponsorship interests - as well as from the No 10 Policy Unit and the Treasury. The Working Group will of course consult with other Departments where their particular interests arise. I am anxious that the review should be receptive to a wide range of external opinion, and interested organisations will be invited to contribute their views.

The review team will report to me periodically and I shall keep the Sub-committee informed. I should mention that I have an outstanding remit to report to the Sub-committee in early 1986 on the operation of the restrictive trade practices legislation. I regard this as overtaken by the proposed review.

I intend to announce the start of the review shortly by written Answer in the terms of the attached draft. I would be grateful for any comments from you and colleagues by Friday 28 February.

I am copying this letter to the Prime Minister, to members of E(CP) and to Sir Robert Armstrong.

  
PAUL CHANNON

DW3AJD

CONFIDENTIAL

17  
19 **86**  
BOARD OF TRADE  
BICENTENARY

DRAFT ANSWER

To ask the Secretary of State for Trade and Industry, what plans he has to review competition policy; and if he will make a statement.

The Government believes that by and large the existing competition legislation has operated effectively and served the economy well. However, from its beginnings in 1948 it has developed in a piecemeal fashion, and there has never been a review of the legislation taken as a whole. Over the period there have been substantial changes in the way competition operates both within the UK economy and internationally. I believe it would now be timely to undertake a comprehensive review, and I have established a small team in my Department to carry out this work. The aim will be to publish a Green Paper in the Autumn of 1987, as a basis for formal consultation and possible subsequent legislation.

The review will involve a thorough analysis of the practical effectiveness of the existing legislation as a whole and piece by piece, and will examine the existing institutional structure of competition policy administration. There can at this stage be no presumption that major change will be desirable; but the review team will begin their work prepared to explore radical options for change among others.

I am keen that the review team should be receptive to a wide range of outside opinion, and with that in mind I invite interested parties to contribute their views in writing on any aspect of competition law and policy. At the initial

stage, it would be most useful to receive comments of a general nature about the operation of the existing legislation and of broad possible alternatives. As the review progresses the review team will in appropriate cases follow up initial contributions with the invitation to put forward more detailed views. Initial written contributions are invited by the end of May.



